IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 701.

IN THE MATTER

of

THE LEBLANC CORPORATION (a Maryland corporation)

and

THE LEBLANC CORPORATION (a Louisiana corporation),
Debtors.

CAPITOL MOTOR COURTS, DOWNTOWN REALTY COMPANY, GALVESTON BROADCASTING COMPANY, LAFAYETTE FRUIT COMPANY, L & H BROKERAGE COMPANY, MERCHANTS GROCERY COMPANY, MIDDLE GEORGIA BROADCASTING COMPANY, RADIO AUGUSTA, RADIO COLUMBIA, INC., RADIO COLUMBUS, INC., TERRE HAUTE REALTY COMPANY doing business as Terre Haute House, TEXAS BROADCASTERS, INC., TIMBERLAKE GROCERY CO. (Albany, Georgia), TIMBERLAKE GROCERY CO. (Thomasville, Georgia), TIMBERLAKE GROCERY CO. (Macon, Georgia), TRIBUNE PUBLISHING CO., WAPO BROADCASTING SERVICE, JAUBERT BROS. INC., I. S. MCELHINEY doing business as New Orleans Envelope Co., COLUMBIA PAPER CO., and CULLMAN BROADCASTING CORP., Creditors,
Petitioners,

v.

THE LEBLANC CORPORATION (a Maryland corporation), and THE LEBLANC CORPORATION (a Louisiana corporation), Debtors, MILTON F. ROSENTHAL, Trustee, and ALBERT HAILPARN, NELSON P. RABONE, ALBERT H. AHLERS, FRANK R. ATWELL, RICHARD P. PROWELL, MICHAEL HALPERIN, JOSEPH ECKHAUS and MORRIS W. PRIMOFF, constituting the Creditors' Committee,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinions Below.

The unanimous opinion of the Court of Appeals for the Second Circuit (R. 131-138) is reported in *Capitol Motor Courts et al.* v. *The LeBlanc Corporation et al.*, 201

F. 2d 356. The opinion of the District Court (R. 105-114) is unreported.

Grounds Upon Which Jurisdiction Invoked.

Petitioners seek under 28 U. S. C. §1254(1) a writ of certiorari to review (1) conclusions of fact drawn by the courts below from the facts in the record and (2) one question of law upon which there is no conflict among the Courts of Appeals for the various circuits, and upon which petitioners lost in the District Court and lost in the Court of Appeals by unanimous decision.

Statutes Involved.

Jurisdiction over Chapter X proceedings is provided in §§128 and 129 of the Bankruptcy Act, which are:

> "Sec. 128. If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction.
>
> "Sec. 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation."

Statement.

This case arises out of proceedings for reorganization of two corporate debtors under Chapter X of the Bankruptcy Act.

The petitioners for a writ of certiorari herein are 21 creditors having claims in a total stated amount of approxi-

mately $161,000 (R. 90) out of total liabilities in the approximate amount of $4,250,000 when the Chapter X petitions were filed (R. 82). Respondents are the Trustee of the debtors appointed by the District Court for the Southern District of New York, the debtor corporations themselves, and the Creditors' Committee of which Albert Hailparn is chairman and which represents approximately 160 creditors holding claims in the stated amount of approximately $3,500,000 (R. 90).

The two debtors in this Chapter X proceeding are corporations bearing the same name—The LeBlanc Corporation. The parent was organized in the State of Maryland (the "Maryland Debtor"), and the subsidiary was organized in Louisiana (the "Louisiana Debtor") (R. 78, 80). On October 3, 1951, the District Court for the Southern District of New York, acting under Section 128 of the Bankruptcy Act, approved the Chapter X petition filed by the Maryland Debtor. Thereafter the same court, acting under Section 129 of the Bankruptcy Act, approved the Chapter X petition filed by the Louisiana Debtor (R. 89).

The Trustee was appointed on October 5, 1951 (R. 47-52), and has been engaged ever since in carrying on the business of the debtors under the orders of the District Court (R. 89-90). The time taken by petitioners in contesting jurisdiction has aggravated the confusion and prejudice to all creditors and stockholders which would result from a decision against the jurisdiction of the District Court, coming as it would now after more than a year and a half of Chapter X administration.*

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* Petitioners filed their notice of appeal from the orders of the District Court on April 16, 1952 (R. 119). The record on appeal to the Court of Appeals was not submitted by them until September 5, 1952 (R. 127). The judgment of the Court of Appeals was filed on January 12, 1953 (R. 141), and the last day on which the petition to this Court could be filed was April 13, 1953. Respondents are advised that the Petition for the Writ was filed in this Court on April 8, 1953.

The facts of the transactions and events preceding the filing of the two Chapter X petitions are complex. They are well summarized in the opinion of the District Court (R. 105-109), and in the opinion of the Court of Appeals (R. 132-134).

For the purpose of disposing of the certiorari petition to this Court, the most important facts, all referred to in the opinions below, are:

(1) All the property of the Maryland Debtor was in the Southern District of New York. Contrary to the statements in the first paragraph on page 6 of the Petition for the Writ, this property consisted of bank accounts averaging about $95,000 (photoprint opposite R. 96), all the outstanding capital stock of the Louisiana Debtor, corporate records and correspondence, and accounts receivable which were pledged to Standard Factors Corporation in the Southern District (R. 85). Although the Maryland Debtor was the assignee of bank accounts in Lafayette, Louisiana, such accounts consistently showed a negative balance or overdraft, and therefore constituted liabilities rather than assets (R. 84, and photoprint opposite R. 96).*

(2) The Maryland Debtor engaged in important business transactions within the Southern District of New York and not elsewhere (R. 79-83, 90). Since a corporation's principal place of business is where its principal business is transacted, "the principal place of business" of the Maryland Debtor within Section 128 of the Bankruptcy Act could only be in the Southern District of New York.

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* Apart from the fact that no separate books of account were opened for the Maryland Debtor, the paragraph of the Petition referred to above, so important to the petitioners' case, is without support in the record.

(3) The Louisiana Debtor is now the subsidiary of the Maryland Debtor, and was the subsidiary of the Maryland Debtor at the date and before the date of the filing of the petitions for reorganization under Chapter X. Neither debtor was organized as a vehicle for Chapter X reorganization in the Southern District of New York (R. 81, 90, 108, 112).

(4) The Debtors' petitions had to be filed under Chapter X rather than Chapter XI of the Bankruptcy Act because (a) it was and is essential on the facts here that a disinterested Trustee be appointed to protect the interests of creditors (R. 111); (b) those in control of the debtors immediately before the Chapter X petitions were filed were so inadequately informed they could not at that time have complied with the Chapter XI requirement that a proposed arrangement with creditors be filed along with a petition (R. 91, 110-111); (c) there were secured creditors whose large claims (R. 82) the Court would have no power to deal with under Chapter XI (R. 111-112); and (d) on the special facts here it was and is essential that both debtors be reorganized in the same court and this would have been impossible under Chapter XI, which has no counterpart of Section 129 of the Bankruptcy Act. (R. 91, 111).*

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* In *Securities and Exchange Commission* v. *United States Realty & Improvement Co.*, 310 U. S. 434 (cited p. 8 of Petition for Writ of Certiorari herein), it was held that the corporation there involved should be reorganized under Chapter X rather than under Chapter XI. Many of the factors upon which this Court rested its decision in that case are also present here. Contrary to petitioners' suggestion, that case does *not* hold, expressly or by implication, that the absence of one of those many factors—numerous and widely scattered stockholders—requires reorganization under Chapter XI rather than under Chapter X.

Questions Presented.

Four questions were unsuccessfully argued by the petitioners to the District Court and to the Court of Appeals. In the petition to this Court, those questions have been fragmentized and coupled with incomplete and misleading statements of fact, but no new questions have been presented.

As paraphrased from the opinion of the Court of Appeals (R. 134), the questions considered and decided below were:

1. Do the facts show that the legal requirements were observed in the District Court's approval of the petitions by the two debtors for reorganization under Chapter X of the Bankruptcy Act? (Question 5, Petition for Writ, p. 3).

2. Do the facts show why adequate relief could not be obtained under Chapter XI through a petition for an arrangement rather than under Chapter X through a petition for reorganization? (Questions 1 and 2, Petition for Writ, pp. 2-3).

3. Do the facts show that the petitions for reorganization under Chapter X were filed in good faith? (Questions 3, 4 and 6, Petition for Writ, p. 3).

4. Did the District Court have power to act in view of the fact that the Maryland Debtor had not been in business for more than three months? (Question 7, Petition for Writ, p. 4).

Argument.

Both the District Court and unanimous Court of Appeals for the Second Circuit answered these questions in the

affirmative. There is no basis in the record, in the Bankruptcy Act or the cases decided thereunder upon which the questions could have been answered in the negative.

As is made apparent by the opinions of the Court of Appeals and the District Court, the answers to the questions presented by this case are relatively simple ones once the somewhat complex facts unique to this case are understood. In that respect, we therefore rely upon the opinions below and upon the Statement in this brief.

The sole question of law which is not dependent for resolution upon the facts unique to this case is abundantly clear. That question is whether the provisions of Section 128 of the Bankruptcy Act which confers Chapter X jurisdiction upon the court in whose territorial jurisdiction a corporation has had its principal place of business "for *a* longer portion of the preceding six months than in any other jurisdiction" is to be construed as if it read "for *the* longer portion of the preceding six months" and as if the words "than in any other jurisdiction" were meaningless.

This construction of Section 128 is argued for by petitioners. If accepted, it would mean that no court can have jurisdiction under Chapter X over any corporation which, like the Maryland Debtor, has been in business for less than six months.

We respectfully submit that this construction of Section 128, which both the District Court and the Court of Appeals rejected, is patently wrong and does violence to the plain meaning of the words used by Congress.

See: *Fada of New York, Inc.* v. *Organization Service Co., Inc.*, 125 F. 2d 120 (2d Cir. 1942).

Conclusion.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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April 24, 1953.